

SUPREME COURT OF INDIA

Kamlesh

Vs.

Union of India

C.A.No.2535 of 2011

(S.Abdul Nazeer and Deepak Gupta,JJ.,)

20.01.2020

JUDGMENT

S.Abdul Nazeer,J.,

1. In this appeal, appellant has challenged the legality and correctness of the order dated 29.08.2008, whereby the High Court of Delhi has dismissed the C.M. Application No. 8277 of 2008, arising out of W.P.(C) No. 9282 of 2004.
2. The appellant was appointed as Extra Departmental Employee (for short 'EDE') at village Pooth Kalan Post Office, on provisional basis. The order of the appointment of the appellant is as under:

“DEPARTMENT OF POSTS Office Of The Sr. Superintendent Of Post Offices Delhi North Delhi- 54 Memo No. A2/142 dated at Delhi 54 the 13.7.92 Whereas the post of EDPM Pooth Kalan PO has become vacant and it is not possible to make regular appointment to the said post immediately. The undersigned has decided to make provisional appointment to the said post for a period from 30.3.92 after noon regular appoint is made. Miss Kamlesh d/o Shri Sardar Singh, H. No. 147 Pooth Kalan, Delhi - 41 is offered the provisional appointment. She should clearly understand that the provisional appointment will be terminated when regular appointment is made and she shall have no claim for appointment to any post.

The undersigned also reserves the right to terminate the provisional appointment at any time before the period mentioned in para 1 above without notice and without assigning any reason thereof.

Miss Kamlesh will be governed by the EDA (Conduct and Service) Rules 1964 as amended from time to time and all other rules and orders applicable to EDA. In case the above conditions are acceptable to Miss Kamlesh, she should sign the duplicate copy of this memo and return the same to the undersigned immediately.

Sd/-
Sr. Supdt. Of Post Offices
Delhi North Dn. 110 054.”

3. On the basis of an order passed by the Central Administrative Tribunal (for short 'the Tribunal') dated 05.02.2003, the appellant made a representation for regularization of service with benefits of seniority. This representation was rejected by the third respondent, by order dated 28.04.2003. The appellant challenged the said order by filing O.A. 1736 of 2003 before the Tribunal. The Tribunal dismissed the said O.A. by order dated 07.05.2004. The respondent passed an order on 20.05.2004 discontinuing the service of the appellant with immediate effect. In the meantime, the appellant filed W.P. No. 9282 of 2004, challenging the legality and correctness of the order passed by the Tribunal dated 26.05.2004. Thereafter, the appellant also challenged the order of discontinuation of her service dated 20.05.2004, by filing an application in the writ petition. In the said case, the question for consideration was whether the appointee can seek regularization by reason of prolonged service. After considering this question in detail, the Court dismissed the writ petition by order dated 08.07.2004. Thereafter, the appellant filed a Review Application, against the said order which was also dismissed by the High Court on 03.12.2004.

4. The appellant filed a Special Leave Petition seeking leave to challenge the orders of the High Court dated 08.07.2004 and 03.12.2004. The Special Leave Petition was dismissed by this Court on 28.03.2008 granting liberty to the appellant to approach the High Court for appropriate reliefs. Accordingly, the appellant filed a Miscellaneous Application No. 8277 of 2008 in Writ Petition No. 9282 of 2004. The High Court by the impugned order has dismissed the miscellaneous application.

5. On 14.03.2011, this Court passed an order directing reinstatement of the appellant to the post of EDE, where she was working before her termination and further, she was directed to be paid on the same basis as other similarly situated employees are being paid on regular basis.

6. We have heard learned counsel for the parties.

7. It is clear from the order of appointment of the appellant that she was provisionally appointed to the post of EDE. It was clarified in the appointment order itself that the provisional appointment will be terminated when regular appointment is made and that she shall have no claim for appointment to any post. The Tribunal has dismissed her claim for regularization by holding that she was not entitled to regularization of her service. The Division Bench of the High Court has again considered the contentions of the appellant in detail. While rejecting the review petition filed by the appellant, the Court has observed as under:

“The petitioner had filed Original Application before the Central Administrative Tribunal seeking regularization, which was dismissed by the Tribunal. Against the order, he preferred writ petition, which was dismissed by us vide our order dated

8.7.2004. While dismissing the writ petition on merits, in the last para we also noted the statement of the learned counsel for the respondent that after the discontinuation of the petitioners they were replaced by regular incumbents who had joined the services. The petitioner thereafter filed review application pointing out that the aforesaid statement of the counsel for the respondent was not correct as no regular incumbents had joined. This review petition was also dismissed on 3.12.2004 clearly observing that even if the aforesaid statement of the counsel for the respondent is not correct and is not taken on record, it did not have any bearing on the merits of the decision in so far as prayer of the petitioner for regularization is concerned. The review petition was dismissed vide said order dated 3.12.2004. It appears that the petitioner challenged the orders passed in the writ petition as well as in the review petition by filing Special Leave Petition in the Supreme Court. In that SLP, order dated 28.3.2008 is passed by the Supreme Court dismissing the SLP. In the opening para of the said order the Supreme Court took note of the observations made in para 11 of the orders passed in the writ petition wherein the statement of the respondent to the effect that regular incumbents have been appointed who have joined is noted. After taking note of that para, submission of the learned counsel for the petitioner is noted that he wanted to rely upon certain information obtained by him under the Right to Information Act and taking note of this submission the Supreme Court observed that the petitioner could approach the High Court for this purpose to pass appropriate orders in accordance with law. It is under these circumstances present review petition is filed but the submission remains the same, namely, there are no appointments on regular basis and no regular incumbents have replaced the petitioner after their services were terminated. It is clear from the narration of events mentioned above that this was precisely the submission in the review petition also which was dismissed on 3.12.2004. Therefore, no fresh plea is taken on the basis of which second review petition would be maintainable. We accordingly dismiss the review petition.”

8. We do not find any error in the order impugned in this appeal. However, the appellant shall be permitted to continue to hold the post of EDE till regular appointment is made to the said post. She is not entitled for any back wages. With these observations, the appeal is dismissed without orders as to costs.